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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,918	02/27/2004	Yasushi Nakoji	03886/0200959-US0	7491
7278	7590	04/25/2005	EXAMINER	
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			MCCALL, ERIC SCOTT	
			ART UNIT	PAPER NUMBER
			2855	

DATE MAILED: 04/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

Office Action Summary

Application No.

10/788,918

Applicant(s)

NAKOJI, YASUSHI

Examiner

Eric S. McCall

Art Unit

2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4 is/are allowed.
- 6) ☒ Claim(s) 5 and 6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/27/2004</u> . | 6) <input type="checkbox"/> Other: ____ |

**FAILURE DIAGNOSTIC DEVICE OF EVAPORATIVE GAS
PURGE CONTROL SYSTEM AND THE METHOD THEREOF**

FIRST OFFICE ACTION

CLAIMS

35 U.S.C. § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Nishioka et al. (5,996,400).

With respect to claim 5, Nishioka et al. suggest a method of diagnosing a failure of an evaporative gas purge control system having an evaporative gas passage communicating a fuel tank with a canister, a purge passage communicating the canister with an engine intake system,

and a pressure control valve interposed in the evaporative gas passage and operated according to a pressure difference between the pressure in the fuel tank and a reference pressure,

the method comprising the steps of:

controlling (25) the purge passage (21) by opening and closing thereof;

opening and closing a fresh air introducing port opened in the canister (22) by a drain valve (28);

detecting the pressure in the fuel tank (TPI);

detecting the drain valve is opened from a energized state to the drain valve and opening the purge passage; and

comparing the pressure in the fuel tank with a closed sticking determination pressure of the drain valve and determining a closed sticking of the drain valve if the pressure in the fuel tank is lower than the closed sticking determination pressure of the drain valve and a state thereof is maintained for a predetermined time (col. 8, lines 5-32).

With respect to claim 6 and in addition to the above comments, Nishioka et al. suggest executing to purge the evaporative fuel by opening the purge passage and the drain valve (col. 8, lines 24-32); and

determining the drain valve is normal if the pressure in the fuel tank while purging the evaporative fuel is higher than a drain valve normality determination pressure and a state thereof is maintained for a predetermined time (col. 8, lines 5-32).

Allowable Subject Matter

Claim 1 (and thus claim 2) has been found to be allowable over the prior art because the prior art fails to teach or suggest a failure diagnostic device of an evaporative gas purge control system, comprising:

a diagnosis start means to detect that the drain valve is opened from an energized state to the drain valve, and open the purge control means; and

a failure determination means to compare the pressure in the fuel tank detected by the tank internal pressure detecting means with a closed sticking determination pressure of the drain valve, and to determine a closed sticking of the drain valve if the pressure in the fuel tank is lower than the closed sticking determination pressure of the drain valve,

in combination with the remaining limitations of said claim.

The Examiner notes that the Applicant's use of the phrase "means to" throughout claim 1 has been interpreted under 35 USC 112, sixth paragraph.

Claim 3 (and thus claim 4) has been found to be allowable over the prior art because the prior art fails to teach or suggest a failure diagnostic device of an evaporative gas purge control system, comprising:

a purge execution means to purge the evaporative fuel by opening the purge control means and the drain valve; and

a failure determination means to determine that the drain valve is normal if the pressure in the fuel tank detected by the tank internal pressure detecting means while purging the evaporative fuel is higher than a drain valve normality determination pressure, in combination with the remaining limitations of said claim.

The Examiner notes that the Applicant's use of the phrase "means to" throughout claim 3 has been interpreted under 35 USC 112, sixth paragraph.

CITED DOCUMENTS

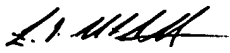
The Applicant's attention is directed to the enclosed "PTO-892" form for the prior art made of record at the time of this office action.

CONCLUSION

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Eric S. McCall whose telephone number is (571) 272-2183.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Eric S. McCall
Primary Examiner
Art Unit 2855
April 15, 2005